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10/070,358

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Hiroshi Kawahara

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VIENNA, VA 22182-3817

EXAMINER

MEINCKE DIAZ, SUSANNA M

ART UNIT

PAPER NUMBER

3692

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/070,358

Applicant(s)

KAWAHARA ET AL.

Examiner

Susanna M. Diaz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-9,11-14,16-18 and 21-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-9,11-14,16-18 and 21-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This non-final Office action is responsive to Applicant's response filed October 8, 2008.

Claims 1, 8, 9, 13, 16-18, and 21-27 have been amended.

Claims 4, 10, 15, and 19-20 have been cancelled.

Claims 1-3, 5-9, 11-14, 16-18, and 21-27 are presented for examination.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-3, 5-8, 14, 18, and 21-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The disclosure does not provide a specific algorithm for performing the functionality corresponding to all of the means (e.g., means for arranging, means for delivering, means for storing) recited throughout claims 1-3, 5-7, and 23-27. A specific algorithm for performing each function is required in order to meet requirements under 35 U.S.C. § 112, 6th paragraph. The specification also fails to clearly set forth which structural element corresponds to each recited means. It is not clear what the metes and bounds of the means recited throughout claims 1-3, 5-7, and 23-27 are. Please refer to

http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section_112_6th_09_02_2

008.pdf

Claims 18, 21, and 22 recite "a means for reading," "a means for adjusting," "a first means for adjusting," "a second means for adjusting," "a third means for adjusting," and "a fourth means for adjusting." Because of the article "a" placed before each "means for...", it is not clear if Applicant intends to invoke 112, 6th paragraph. If Applicant's intention is to invoke the benefits of 112, 6th paragraph, the disclosure does not provide a specific algorithm for performing the functionality corresponding to all of the means (e.g., a means for reading, a means for adjusting) recited throughout claims 18, 21, and 22. A specific algorithm for performing each function is required in order to meet requirements under 35 U.S.C. § 112, 6th paragraph. The specification also fails to clearly set forth which structural element corresponds to each recited means. It is not clear what the metes and bounds of the means recited throughout claims 18, 21, and 22 are. Please refer to

http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section_112_6th_09_02_2008.pdf

Claim 8 recites "setting a schedule of cargo transportation" and then "adjusting the schedule of cargo transportation." Subsequently, claim 8 makes various references to "said schedule," "said transportation schedule," "another transportation schedule," "said first transportation schedule," and "said second transportation schedule." It is not clear when the original schedule, the adjusted schedule, or a different schedule altogether is referenced. What is the relationship among the various recited schedules?

Claim 14 recites "said adjusting of cargo transportations comprising a first

freighter in said schedule being allocated as an additional freighter and a remainder of freighters in said schedule being shifted sequentially to be allocated to an original purchaser of said schedule." It is not clear who or what "an original purchaser of said schedule" is. There is no previous indication in the claim that any purchase is made within the scope of the claim. Furthermore, it is not clear why a schedule would be purchased.

Claim 23 recites a "transaction coordinating system comprising: the transaction coordinating device as claimed in claim 2; and a terminal..." Claim 23 appears to be dependent from claim 2, yet it expands the scope of claim 2 by reciting a "transaction coordinating system" in the preamble, while claim 2 is limited to the "transaction coordinating device" itself. It is not clear if claim 23 is dependent from claim 2 or is meant to be an independent claim. If claim 23 is meant to be a dependent claim, then it is improper for failing to further limit the scope of claim 2. If claim 23 is meant to be an independent claim, then claim 23 should clearly be written in independent claim format to explicitly incorporate the desired metes and bounds of the transaction coordinating device.

Claim 24 recites a "transaction coordinating system comprising: the transaction coordinating device as claimed in claim 3; and a terminal..." Claim 24 appears to be dependent from claim 3, yet it expands the scope of claim 3 by reciting a "transaction coordinating system" in the preamble, while claim 3 is limited to the "transaction coordinating device" itself. It is not clear if claim 24 is dependent from claim 3 or is meant to be an independent claim. If claim 24 is meant to be a dependent claim, then it

is improper for failing to further limit the scope of claim 3. If claim 24 is meant to be an independent claim, then claim 24 should clearly be written in independent claim format to explicitly incorporate the desired metes and bounds of the transaction coordinating device.

Claim 25 recites a "transaction coordinating system comprising: the transaction coordinating device as claimed in claim 1; and a terminal..." Claim 25 appears to be dependent from claim 1, yet it expands the scope of claim 1 by reciting a "transaction coordinating system" in the preamble, while claim 1 is limited to the "transaction coordinating device" itself. It is not clear if claim 25 is dependent from claim 1 or is meant to be an independent claim. If claim 25 is meant to be a dependent claim, then it is improper for failing to further limit the scope of claim 1. If claim 25 is meant to be an independent claim, then claim 25 should clearly be written in independent claim format to explicitly incorporate the desired metes and bounds of the transaction coordinating device.

Claim 26 recites a "transaction coordinating system comprising: the transaction coordinating device as claimed in claim 5; and a terminal..." Claim 26 appears to be dependent from claim 5, yet it expands the scope of claim 5 by reciting a "transaction coordinating system" in the preamble, while claim 5 is limited to the "transaction coordinating device" itself. It is not clear if claim 26 is dependent from claim 5 or is meant to be an independent claim. If claim 26 is meant to be a dependent claim, then it is improper for failing to further limit the scope of claim 5. If claim 26 is meant to be an independent claim, then claim 26 should clearly be written in independent claim format

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to explicitly incorporate the desired metes and bounds of the transaction coordinating device.

Claim 27 recites a "transaction coordinating system comprising: the transaction coordinating device as claimed in claim 6; and a terminal..." Claim 27 appears to be dependent from claim 6, yet it expands the scope of claim 6 by reciting a "transaction coordinating system" in the preamble, while claim 6 is limited to the "transaction coordinating device" itself. It is not clear if claim 27 is dependent from claim 6 or is meant to be an independent claim. If claim 27 is meant to be a dependent claim, then it is improper for failing to further limit the scope of claim 6. If claim 27 is meant to be an independent claim, then claim 27 should clearly be written in independent claim format to explicitly incorporate the desired metes and bounds of the transaction coordinating device.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 13, 14, 16, 17, 18, 21, and 22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In claims 13, 16, and 17, it is not clear who or what executes the program; therefore, the program of instructions of claims 13, 16, and 17 could merely be instructions given to guide a human in executing the instructions. Thus, claims 13, 16,

and 17 may be interpreted as non-functional data stored in a medium, which is non-statutory under § 101.

Claim 14 recites that “the program is stored for executing, *on* a digital device”; however, it is not clear that the program, when executed, causes the digital device to perform the subsequently recited functionality. Therefore, the program of instructions of claim 14 could merely be instructions given to guide a human in executing the instructions. Thus, claim 14 may be interpreted as non-functional data stored in a medium, which is non-statutory under § 101.

Claims 18, 21, and 22 recite a computer-readable program product containing a computer program; however, this computer program is not explicitly recited as being stored in a static medium. Therefore, claims 18, 21, and 22 are directed toward a computer program *per se*, which is non-statutory under § 101.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borders et al. (US 2001/0047285) in view of Official Notice.

Borders discloses a computer-readable recording medium on which is stored a program of instructions for inserting a spot transaction based on a temporary contract, said temporary contract being made without respect to a fixed transaction based on a contract of predetermined term, said spot transaction comprising a transaction based on a one-time sales contract or based on an intermittent supply contract which is completed in a few times, said fixed transaction comprising a long-term stable offtake contract of predetermined term in which transportation schedules can be confirmed at least about a year before (It should be noted that the contractual terms surrounding a spot transaction are outside of the scope of the claimed invention since the details of creating a temporary contract are not positively recited. Additionally, the fact that the spot transaction is based on a temporary contract does not affect any recited structure nor any manipulative steps of the claimed invention; therefore, the contractual limitations associated with the spot transaction will not distinguish the claimed invention over the prior art. Similarly, it should be noted that the contractual terms surrounding a fixed transaction are outside of the scope of the claimed invention since the details of actively setting the transaction as a fixed transaction for a predetermined term are not positively recited. This feature of the invention does not affect any recited structure nor any manipulative steps of the claimed invention; therefore, the fact that the transaction is fixed and based on a contract of predetermined term will not distinguish the claimed invention over the prior art. Consequently, for purposes of examination, a "spot transaction" will be interpreted as a transaction that is in the process of being scheduled

while a "fixed transaction" will be interpreted as a transaction that has already been scheduled), on a digital device, steps of:

[Claim 14] delivering conditions relative to said spot transaction from a party on one side of said spot transaction with respect to a party on an other side of said spot transaction (¶¶ 56-63);

reading previously stored data associated with a transportation and conditions of said spot transaction in an event that said spot transaction is organized based on the delivering conditions of said spot transaction (Figs. 1, 3; ¶¶ 45-47, 57-64); and

adjusting an insertion of a cargo transportation relative to said spot transaction with respect to a previously set schedule of cargo transportation relative to said fixed transaction based on the read data associated with said transportation and the contracts of said spot transaction (Figs. 1, 3; ¶¶ 45-47, 57-64).

Regarding the preamble of claim 14, even if the fact that a spot transaction is based on a temporary contract being made without respect to a fixed transaction and the fixed transaction is based on a contract of predetermined term (and details thereof) were granted patentable weight (beyond representing a transaction currently being scheduled versus already scheduled transactions), such details would be obvious in light of the prior art teachings. While Borders does not expressly disclose the contractual details behind a spot versus a fixed transaction, Official Notice is taken that it was old and well-known in the art of shipping at the time of Applicant's invention to define shipment contracts that are more temporary and ones that are more long-term

(i.e., fixed for a predetermined term) [now admitted prior art]. As explained above, the contractual details behind the spot and fixed transactions do not affect the claimed structural elements nor do they affect the manipulative steps of the claimed invention. Regardless of the contractual details behind the transactions, as claimed, the recited structure and functionality would remain the same; therefore, the application of the claimed scheduling method, system, and computer program product to any type of transaction would yield predictable results. For example, the claims merely schedule one transaction. There are no iterations to schedule recurring deliveries versus only one single delivery; therefore, a contract that might require repeat deliveries is treated no differently than a contract for a single delivery. Consequently, one of ordinary skill in the art at the time of Applicant's invention would have recognized that the application of Borders' shipment scheduling invention to various existing types of shipment contracts (including the details set forth in the preamble of claim 14) would have yielded predictable results because the operation of Borders' scheduling as well as the operation of establishing contractual terms are not altered by a combination of the two.

As per claim 14, Borders does not explicitly disclose that said adjusting of cargo transportation comprising a first freighter in said schedule being allocated as an additional freighter and a remainder of freighters in said schedule being shifted sequentially to be allocated to an original purchaser of said schedule; however, Borders performs an optimization by aggregating multiple deliveries to the same address into one single delivery (§ 64). One of ordinary skill in the art at the time of Applicant's invention would have recognized that aggregating multiple deliveries to the same

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address implies that the deliveries would have otherwise been delivered by multiple vehicles (or at least by the same vehicle during multiple trips); therefore, consolidating deliveries to a single address is expected to free up delivery resources. Official Notice is taken that it was old and well-known in the art at the time of Applicant's invention to optimize a delivery schedule to minimize the number of vehicles (or freighters) needed to complete all scheduled deliveries; such a strategy often saves costs associated with manning an extra vehicle/freighter and paying the additional fuel costs. Therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Borders such that said adjusting of cargo transportation comprising a first freighter in said schedule being allocated as an additional freighter and a remainder of freighters in said schedule being shifted sequentially to be allocated to an original purchaser of said schedule in order to optimize a delivery schedule to minimize the number of vehicles (or freighters) needed to complete all scheduled deliveries (when possible) since such a strategy often saves costs associated with manning an extra vehicle/freighter and paying the additional fuel costs.

Allowable Subject Matter

8. Claims 1-3, 5-9, 13, 16-18, and 21-27 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 101 and 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Susanna M. Diaz/
Primary Examiner, Art Unit 3692